

DETAILED ACTION

Applicants' arguments, filed 08/26/2008, have been fully considered with the filing of the RCE. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Claims 12-20 and 41 were rejected under 35 U.S.C. 103(a) as being unpatentable over Dole et al (US Pregrant Pub 2003/0044366, See PTO 1449 dated 10/25/2007).

Dole et al has been discussed in prior actions dated 10/25/2007 and 4/10/2008.

Applicants now assert that by amending the previously withdrawn cosmetic cream of claim 44 into claim 12, Dole et al is overcome.

Examiner disagrees. Dole et al does not specifically disclose a cosmetic cream, the same components instantly claimed are taught. Specifically, the components taught include a 1-5% lipid component (cationic surfactants at ¶20), 5-15% emollient (¶ 16 and claim 9) , 0.1-10% surfactants (PEG at ¶¶ 17-21), a preservative (¶¶ 32-40), and a pH regulator (¶¶ 32-36). Also see generally page 5 and 6 compositions of Example 1

While Dole et al does not explicitly define the addition of a "cosmetic cream", the instant claims are directed to a cosmetic mask containing various components which are defined as a "cosmetic cream". Where the prior art teaches the addition of the same components that together constitute the instant "cosmetic cream", that limitation is met. As such, it would be obvious to one of ordinary skill in the art to pick and choose among the commonly used excipients disclosed in the prior art in ratios disclosed by the working examples and description of the prior art for the preparation of a face mask that includes the suggested anti-acne agent, retinoic acid (¶ 25 previously discussed) and

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the various components of the instant "cosmetic cream", reading on the newly amended claims.

Conclusion

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Packard whose telephone number is 571-270-3440. The examiner can normally be reached on M-R 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Benjamin Packard/
Examiner, Art Unit 1612

/Frederick Krass/

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Supervisory Patent Examiner, Art Unit 1612